

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

The Gateway Development Group, Inc.

Chapter 7

Case No. 21-22304 (RDD)

Debtor.

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**MOTION FOR LEAVE TO FILE SUR-REPLY TO TRUSTEE'S
REPLY TO CREDITOR'S OBJECTION TO THE APPLICATION
TO RETAIN PULLMAN & COMLEY, LLC AS SPECIAL COUNSEL**

TO THE HONORABLE ROBERT D. DRAIN,
UNITED STATES BANKRUPTCY JUDGE:

Creditor James Carnicelli, Jr., by and through his undersigned counsel, respectfully moves for leave to file the Sur-Reply to the Trustee's Reply (the "Reply") to Objection of James Carnicelli, Jr. to the Application to Retain Pullman & Comley, LLC. The Reply is attached hereto as **Exhibit A**.

Dated: Stamford, Connecticut

PASTORE & DAILEY LLC

June 11, 2021

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EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

The Gateway Development Group, Inc.

Chapter 7

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**SUR-REPLY TO TRUSTEE’S REPLY TO CREDITOR’S OBJECTION TO THE
APPLICATION TO RETAIN PULLMAN & COMLEY, LLC AS SPECIAL COUNSEL**

TO THE HONORABLE ROBERT D. DRAIN,
UNITED STATES BANKRUPTCY JUDGE:

Creditor James Carnicelli, Jr. (“Mr. Carnicelli”), by and through his undersigned counsel, respectfully submit this Sur-Reply to the Trustee’s Reply (the “Reply”) to Objection of James Carnicelli, Jr. to the Application to Retain Pullman & Comley, LLC (“P & C”) as Special Counsel (the “Application”) filed by Howard P. Magaliff, the chapter 7 interim trustee (the “Trustee”) of the estate of The Gateway Development Group, Inc. (the “Debtor”), and respectfully states:

1. This is not in any way personal. The Reply states that the Application must be granted so that the Trustee can “hire his own counsel to make an independent assessment of serious claims asserted against [Fareri] and the other defendants in the Connecticut Action.” Reply ¶ 1. If the Trustee is as concerned about the claims against Fareri and the other defendants in the Connecticut Action as he so states, removing the claims from Judge Sheila A. Ozalis who (i) has knowledge of the case, (ii) was set to preside over a preliminary injunction immediately hearing prior to the filing of this bankruptcy, (iii) has scheduled an attachment hearing on attaching Fareri’s property in Connecticut for the Debtor’s benefit, (iv) has ordered discovery to proceed over the defendants’ objections, and (v) has ruled in the Debtor’s favor numerous times, is a puzzling approach. If the Trustee intends to pursue these claims vigorously – which is the goal here – protect

the claims, why kibosh the entire case and remove it to Federal Court the day before Fareri had to file a brief?

2. Additionally, the Reply completely disregards the fact that P & C's notice of removal (the "Notice of Removal") filed yesterday seeks to remove the *entire* Connecticut case captioned *James Carnicelli, Jr. et. al. v. John J. Fareri et. al.* (FST-CV20-6048778-S) (the "Connecticut Action") including Mr. Carnicelli's personal direct claims against John J. Fareri ("Fareri"), that are independent of this bankruptcy or the Debtor and are personal claims brought by Mr. Carnicelli against Fareri. At a minimum, the Court and/or the Trustee must rectify this mistake.

3. The Trustee also states that Mr. Carnicelli assumes that the "Motion to Dismiss the chapter 7 case, which will be heard on July 12, will unquestionably be granted" and "until then, the Trustee must be permitted to retain counsel of his choice and administer the estate..." Reply ¶¶ 2, 8. Mr. Carnicelli sought to have the Motion to Dismiss¹ heard earlier by filing a Motion to Shorten Time. The Trustee, however, quickly objected to that motion and now tries to exploit the later hearing date to support his need to hire professionals until the Motion to Dismiss is heard.

4. Mr. Carnicelli is very pleased that the Trustee has stated in the Reply that the "Trustee understands exactly what his fiduciary responsibilities are, is perfectly capable of performing his duties, and is doing so without favor." Reply ¶ 7. Mr. Carnicelli is only looking for assurances that all claims, excluding Mr. Carnicelli's direct claims against Fareri, are vigorously litigated by the Trustee. Mr. Carnicelli's counsel in Connecticut, Pastore & Dailey, has one agenda: do not let the procedural ploys of a bad faith bankruptcy filing by Fareri derail and destroy these

¹ All capitalized terms not defined herein have the same definition as those in the Objection.

claims. So far, the Trustee, has again perhaps unintentionally, done a world of harm to those claims.

WHEREFORE, Creditor James Carnicelli, Jr. respectfully requests that the Trustee's Application to retain P & C be denied or in the alternative, that the Court order the Trustee and P & C to immediately inform Mr. Carnicelli if they do not intend to pursue the claims asserted in the Connecticut Action vigorously.

Dated: Stamford, Connecticut

June 11, 2021

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